

REMARKS

The Office Action mailed December 17, 2004, has been carefully considered. In response thereto, the present application has been amended in a manner which is believed to place it into consideration for allowance. Accordingly, reconsideration and allowance are respectfully solicited in view of the foregoing amendments and the following remarks.

At the outset, the Applicants acknowledge with appreciation the courtesy extended during the telephone interview conducted March 2, 2005. During that interview, differences between the applied prior art and the subject matter of claims 1 and 4 were discussed. It was agreed that the recitations of the pseudo message and the conversion of information would be clarified and that arguments would be submitted distinguishing the invention over the applied references and over certain commercial software packages cited in the applied references. More specific points will be noted below.

The present Amendment includes line numbers as requested in section 2 of the Office Action.

In response to section 3 of the Office Action, the Applicants respectfully submit that as there are no such parent priority applications cited in the first line of the specification, the requirement of section 3 of the Office Action is moot.

In response to section 4 of the Office Action, the present specification has been amended to identify IBM as a trademark. However, the amended paragraph of the specification already contains the generic terminology "communications protocols."

In response to section 5 of the Office Action, the Applicants respectfully traverse the objection to the declaration. There is no requirement that a declaration be notarized at all. Therefore, the declaration is not defective.

Claims 6-11 and 14 are rejected under 35 U.S.C. § 112, second paragraph. With regard to claims 6-11, the Applicants respectfully traverse, as no reason at all is given for the rejection of those claims on that ground. With regard to claim 14, the Applicants respectfully submit that a person having ordinary skill in the art would have understood the meaning of originally filed claim 14. However, to expedite prosecution, the Applicants have amended claim 14 to spell out the abbreviation. Because a person having ordinary skill in the art would have understood the meaning, no new matter has been added.

Claims 1-3 are rejected under 35 U.S.C. § 102(e) over *Dattatri*. For the reasons set forth below, the Applicants respectfully submit that the claims as amended define subject matter that is patentable over that reference.

According to the present invention, at least one performance monitor sends a pseudo message to an entry server to determine network availability. The pseudo message is received from the at least one performance monitor, and a response for the pseudo message is determined for each segment of the network traversed by the pseudo message to determine where availability problem(s) exist within the network connection for the entry server.

The applied reference teaches no such thing. *Dattatri* teaches a system for commercial communications in which communication between trading partners is tracked so that information goes to a desired trading partner in a timely manner and in which receipt can be verified. The system of *Dattatri* bears some superficial resemblances to the present claimed invention. However, in the discussion of steps (c) and (d) in the reference, the Office Action cites portions of the reference that only loosely resemble the operations of those steps in the claims. The Office Action primarily emphasizes the teachings in the reference concerning a portal; however, the portal is a user interface and does not provide the functionality of steps (c) and (d) in the

present invention. The communication in the portal using XML as described in the reference does not provide a way to determine a response at each segment of the network traversed by the pseudo message.

During the interview, the Examiner requested that the above-noted differences be clarified through a claim amendment. The Applicants respectfully submit that the claims as amended clarify those differences.

The Examiner also noted that the applied reference teaches the use of HP Openview and alleged that HP Openview meets the disputed claim limitations. For the reasons set forth below, the Applicants respectfully disagree.

HP Openview uses a synthetic transaction as viewed from the client-side, to gather end-user response time and availability information. Use of synthetic transactions implies actual scripting of production transactions and then replaying these scripted transactions from some device (PC, etc) that emulates the end-user. This device must reside at typical end-user locations to be effective.

The present claimed invention does not need this type of scripted transaction to gather end-user experience. The performance monitor gathers information about the actual end-user transaction to determine the real end-user transaction performance. When end-user transactions appear to have stopped from any network segment that has historically sent transactions to the system being monitored (in the invention this is determined by the network monitor manager), or has stopped from the application server view, the network monitor manager tells the performance monitor to send a pseudo message to the network segment of the end-user. The purpose of this pseudo message is to determine whether the end-user segment has been severed off from the system, and to gather network segment information along the path to the end-user segment, in

order to identify where the network is broken. The pseudo message is also used to determine application server availability. This availability test is made whenever the performance monitor and/or network monitor manager have determined that transaction flow is not normal or has stopped. The performance monitors can reside anywhere in the application environment and can send pseudo messages to the areas that need to be tested for availability.

Thus, the applied reference does not anticipate the present claimed invention.

Claims 4-5 are rejected under 35 U.S.C. § 103(a) over *Dattatri* in view of *Lin et al.* The Applicants respectfully submit that the amended claims define subject matter that is patentable over the combination of references.

Lin et al is cited for a filter; however, that filter does not perform the same operations as the filtering agent of the present claimed invention. Instead, the filter of *Lin et al* merely filters out unnecessary reporting details.

Finally, claims 6-14 are rejected under 35 U.S.C. § 103(a) over *Dattatri* in view of *Lin* and further in view of officially noticed prior art. The Applicants respectfully traverse the official notice of the prior art and therefore traverse the rejection.

Under MPEP § 2144.03 and the cases cited therein, prior art may be officially noticed only when it is “capable of instant and unquestionable demonstration as being well-known.” In particular, “assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.”

In particular, official notice of the following claim limitation constitutes an assertion of technical facts in the areas of esoteric technology or specific knowledge of the prior art and must therefore be supported by a citation to some reference work: the “concept and advantages of

providing for categorization within a database" (claim 6), not merely in the abstract, but also as relating to the invention as a whole as defined by claim 6.

Absent such a citation of prior art, the Applicants respectfully submit that claims 6-14 define patentable subject matter.

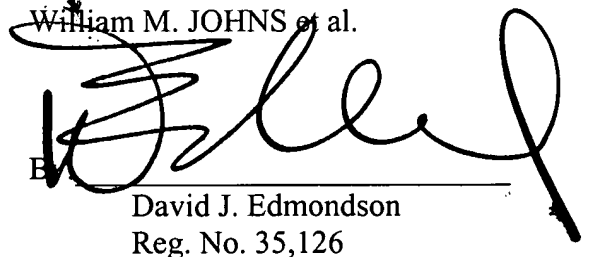
For the reasons set forth above, the Applicants respectfully submit that the application as amended is in condition for allowance. Notice of such allowance is respectfully solicited.

If there remain any issues that can be overcome through a further telephone communication, the Examiner is invited to telephone the undersigned at the telephone number set forth below.

Please charge any deficiency in fees, or credit any overpayment thereof, to the account of Blank Rome, LLP, Deposit Account No. 23-2185 (111788.00101). If a petition for an extension of time is required to render the present submission timely and either is not filed concurrently herewith or is insufficient to render the present submission timely, the Applicants hereby petition under 37 C.F.R. § 1.136(a) for an extension of time for as many months as are required to render the present submission timely. Any fee due is authorized above.

Respectfully submitted,

William M. JOHNS et al.

A handwritten signature in black ink, appearing to read 'D. Edmondson', is written over a horizontal line. The signature is stylized and cursive.

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